

STATE OF ILLINOIS

ORIGINAL

ILLINOIS COMMERCE COMMISSION

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MAY 8 2006

Illinois Commerce Commission  
RAIL SAFETY SECTION

COUNTY OF COOK, )  
THE VILLAGE OF EAST HAZEL CREST and )  
THE VILLAGE OF HAZEL CREST, )  
bodies politic and corporate; )

PETITIONERS )

vs. )

CASE NO. T 05-0051

ILLINOIS CENTRAL RAILROAD COMPANY, )  
THE STATE OF ILLINOIS, )  
DEPARTMENT OF TRANSPORTATION, )

RESPONDENTS )

THE CITY OF HARVEY, )

NECESSARY PARTY )

**2<sup>ND</sup> AMENDED PETITION**

Now comes the County of Cook, Village of East Hazel Crest and Village of Hazel Crest (PETITIONERS), and respectfully petition the Illinois Commerce Commission (Commission) to review and allocate costs for proposed improvements within the subway beneath the Illinois Central Railroad Company's elevated tracks at 171<sup>st</sup> Street in the Villages of East Hazel Crest, Hazel Crest and the City of Harvey. In support of its Petition the PETITIONERS state as follows:

1. PETITIONERS are bodies politic and corporate in the State of Illinois.
- 1.(a)The City of Harvey is named as a necessary party pursuant to the Administrative Law Judge's April 17, 2006 order.
2. Respondent Illinois Central Railroad Company("Railroad" or "IC") is a registered rail carrier operating in the State of Illinois.
3. Respondent State of Illinois, Department of Transportation (hereinafter referred to as "Illinois Department of Transportation") is charged with the responsibility for supervising the distribution and use of the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as amended.
4. There is an existing vehicular underpass crossing of the Railroad at 171<sup>st</sup> Street (D.O.T. Structure Numbers 016-3070, 016-3071, 016-3073, 016-9717) in the Village of East Hazel Crest, City of Harvey and Village of Hazel Crest.
5. The PETITIONERS seek to improve 171<sup>st</sup> Street, between Wood Street and Ashland Avenue, in the Villages of East Hazel Crest, Hazel Crest and the City of Harvey as described more fully below and depicted on the design plans and specifications attached hereto as Group Exhibit "A".

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## EXISTING CONDITIONS

6. That jurisdiction of 171<sup>st</sup> Street within the project limits is designated as part of the Cook County Highway System (County Highway Route Number B84).
7. In 1918, the Railroad sought, and was granted conditional approval by the Village of Hazel Crest and Township of Thornton, to elevate and enlarge portions of the Railroad's yards and tracks along 171<sup>st</sup> Street. The work initiated by the Railroad was to their direct benefit by facilitating construction of a desired railroad yard. See 1918 Ordinances attached hereto as Exhibits "C1" (Village) and "C2" (Township).
8. That the PETITIONER, County of Cook, is the legal successor to the Township (TOWN) of Thornton as stated in the March 20, 1918 agreement with the Railroad and that the PETITIONER is the legal successor to the Village of Hazel Crest as stated in the March 20, 1918 agreement with the Illinois Central Railroad by virtue of the following chain of custody of jurisdiction of the roadway as set forth in Exhibit "H".
9. In order for the Railroad to construct the railroad yard, the Railroad lowered the existing surface of 171<sup>st</sup> Street and elevated its roadbed and tracks over an existing at-grade crossing at 171<sup>st</sup> Street. The lowering of the street surface created a subway for vehicular and pedestrian traffic passing beneath the elevated tracks that extends from east of Park Avenue (formally Egyptian Trail) to west of Ashland Avenue.
10. In accordance with the explicit terms of the 1918 agreement with the Village of Hazel Crest, the Railroad was obligated and responsible, at its sole expense, to construct and/or install and maintain the subway drainage and lighting system. (See Sections 4 and 12 of the Village Agreement, "C1").
11. For a number of years, the subway created by the Railroad to benefit their Railroad yard construction has had a documented history of flooding during rainfall events. Vehicles often get trapped under the viaducts during rainfall. These occurrences result in 171<sup>st</sup> Street being rendered impassible for substantial periods, imposing considerable burdens on East Hazel Crest and Hazel Crest emergency vehicles and to area traffic as a whole. In addition, lighting beneath each of the underpasses is inadequate or inoperable and has not been maintained by the Railroad. (See Exhibits F, G-1 & 2 and I).
12. Improper drainage within the subway is the result of a dysfunctional drainage system including storm sewers, laterals and catch basins for the ¼ mile stretch of 171<sup>st</sup> Street within the subway area, as well as a flat roadway profile between the west and east limits of the subway. Approximately 53 acres of railroad property are tributary to the subway area and runoff from this area drains unrestricted onto the 171<sup>st</sup> Street pavement.
13. The Railroad has further contributed to improper drainage of the subway area by failing to maintain the stormwater outlet. The stormwater outlet for the entire subway area is a drainage ditch that runs northeasterly from 171<sup>st</sup> Street and Ashland Avenue until it hits Center Street at approximately 167<sup>th</sup> Street. This ditch then runs along the west side of Center Street until it discharges into the Calumet – Union Drainage Ditch. This ditch, originally constructed 80 plus years ago as part of the subway construction, is in severe need of maintenance. Under the terms of the 1918 agreement with the Town of Thornton (Exhibit "C2"), specifically the sixth provision, the Railroad shall "Dig, construct and forever thereafter maintain" this ditch. The Railroad has allowed dense vegetation,

erosion, debris, fallen trees, abandoned railroad trestles and sediment buildup to occur thereby resulting in loss of conveyance capacity of the ditch.

### **PROPOSED IMPROVEMENT**

14. In an effort to address safety issues as a result of drainage problems within the subway limits created by the existing conditions (originally constructed by the Railroad) and improper maintenance by the Railroad, Cook County proposes an improvement plan for the Commission's review and consideration. The main objectives of the proposed project are to:
  - a) Correct the flooding problems on 171<sup>st</sup> Street that have been reported by the municipalities and the County Highway Bureau of Maintenance.
  - b) Lower the road profile to attain standard vertical clearances under the four (4) railroad viaduct bridges.
  - c) Replace the pavement which has reached the end of its design life.
15. The Cook County Board of Commissioners, by resolution duly passed (see Exhibit "D" attached) has determined that public interest demands the improvement of 171<sup>st</sup> Street (hereinafter referred to as "PROJECT") at the area of the subway which carries 171<sup>st</sup> Street under the tracks controlled by the Railroad. The limits of the project extend along 171<sup>st</sup> Street from Wood Street east to Ashland Avenue of which 2,150 feet (0.407 miles) are to be improved. (See Exhibit "A" attached)
16. That the County of Cook and Village of East Hazel Crest have entered into agreements (See Exhibit "E" attached) for purposes of designing and constructing the project.
17. That this PROJECT is in the best interests of the motoring public because it will vastly improve present regional traffic flow on 171<sup>st</sup> Street while providing a safer roadway. Current delays experienced by police, fire and medical emergency vehicles due to flooding and stuck semi-trailers due to inadequate vertical clearance will be eliminated. The PROJECT is expected to take twenty-four (24) months to complete.
18. That in the interest of public safety, convenience and necessity, the PETITIONER, County of Cook, has caused to be prepared plans and specifications for the reconstruction of the subway pavement and necessary appurtenances (see Exhibit "A" attached). Briefly stated, 171<sup>st</sup> Street will be removed and replaced with three twelve feet (12') wide ten inch (10") thick concrete lanes with concrete curb and gutter, drainage inlets, entirely new main drain, a detention basin with a pump house and associated force main, sidewalks will be reconstructed, retaining walls replaced, the vertical clearance will be increased from twelve feet six inches (12' 6") current at the underpasses to a minimum of fourteen feet six inches (14' 6"), installation of a modern underpass and street lighting system within the limits of the proposed improvement and associated necessary highway appurtenances. The purpose of the stormwater detention facility, which will be located immediately south of 171<sup>st</sup> Street on Railway property, is to accommodate drainage of areas tributary to the subway, including 53 acres from Railroad property, in accordance with Illinois Drainage Law. (See Group Exhibit "A".)

19. The drainage and underpass lighting costs of the proposed improvement should be allocated to the Railroad as:
  - a) 171<sup>st</sup> Street was lowered solely due to the construction of the Railroad overpasses built by the Railroad;
  - b) Virtually all of the stormwater runoff tributary to the subway is derived from Railroad property;
  - c) The Railroad is obligated to provide for adequate drainage and lighting within the subway pursuant to the 1918 Agreements. Based upon cost estimates for this project available to the Petitioner at the time of filing of this Petition, it is estimated that approximately 2.46 million dollars of the total project cost of approximately seven million dollars are attributable to drainage and underpass lighting improvements. (See Group Exhibit B”).
20. Even if the existing pavement profile were being maintained, detention requirements and the physical impossibility of installing a functional gravity drainage system to meet the existing invert elevation at the outfall necessitate the construction of a detention basin and a lift station as proposed.

#### **PROJECT SCHEDULE AND FUNDING**

21. PETITIONERS have met with the Railroad in an attempt to identify and resolve design elements and cost responsibilities. PETITIONERS have proceeded with its improvement plans for 171<sup>st</sup> Street with the expectation that either:
  - a) The parties would agree on the design elements and cost participation of the project; or
  - b) the parties would agree on the design of the project and leave the allocation of costs issue up to the appropriate administrative or judicial forum for decision.
22. In order to address and resolve the safety issues in this proposed project which demand a swift as practical resolution, Cook County was, and is, willing to “up front” the balance of costs for the project that remained after Federal and local funding sources were expended, provided that Cook County retained its right to pursue reimbursement of applicable costs from the Railroad as noted in (b) above. See Exhibit G-6.
23. Easement agreements recently prepared by the Railroad, however, contain language which, if executed by Cook County, would not only preclude Cook County from seeking legal relief for Railroad cost participation in the project, but also exonerate the Railroad from its current maintenance and drainage obligations under the 1918 Agreements. Consequently, this project cannot move forward without this Commission’s determination of the allocation of Railroad costs associated with the proposed improvement.
24. Cook County also seeks ICC funding for a portion of the proposed project in light of the nature of the safety issues the project addresses in an amount the Commission deems just and equitable.

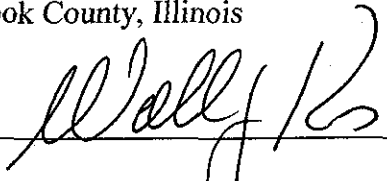
25. Cook County agrees to pay the balance of construction costs for this project, less drainage and underpass associated lighting costs properly allocated to the Railroad, after application of available Federal, local and ICC funding.

WHEREFORE, PETITIONERS respectfully requests that this Commission:

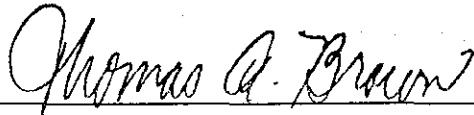
- A. Hear and decide the merits of this Petition on an expedited basis;
- B. Review the submitted proposed design plans and specifications (See Exhibit "A") and acknowledge that they have been developed based upon current Illinois Department of Transportation and Federal criteria concerning lighting and vertical clearance requirements, as well as that the improvement will address the primary safety concern of flooding.
- C. Allocate the Railroad associated costs of the drainage and lighting improvements for the project to the Railroad, payable to Cook County, as defined in Exhibit "B".
- D. Direct that the Railroad restore the northerly drainage ditch through Railroad property and along Center Street from 171<sup>st</sup> Street at Ashland Avenue to the Calumet Union Drainage Ditch to the conditions described in the 1918 Agreement.

RESPECTFULLY SUBMITTED,


WALLY S. KOS, P.E.  
Superintendent of Highways  
Cook County, Illinois



THOMAS A. BROWN  
Village President  
Village of East Hazel Crest



ROBERT DONALDSON  
Village President  
Village of Hazel Crest



STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

**ILLINOIS COMMERCE COMMISSION**

COUNTY OF COOK; VILLAGE OF EAST )  
HAZEL CREST; and the VILLAGE OF HAZEL )  
CREST; bodies politic and corporate, )

Petitioners, )

v. )

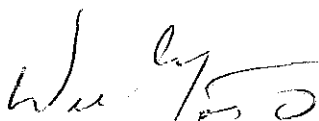
NO. T-05-0051

ILLINOIS CENTRAL RAILROAD COMPANY )  
THE STATE OF ILLINOIS, DEPARTMENT )  
OF TRANSPORTATION, )

Respondents. )

**CERTIFICATE OF SERVICE BY MAIL**

I, William Motto, an attorney, certify that I caused a copy of the Second Amended Petition in the above referenced cause to be served on the parties listed on the attached service list by depositing same in the U.S. Mail, with proper postage prepaid, at 500 Richard J. Daley Center, Chicago, Illinois 60602 on May 4, 2006 before 5:00 p.m.

  
\_\_\_\_\_  
William Motto  
Assistant State's Attorney

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